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April 10, 2008

**BY OVERNIGHT MAIL**  
**AND REGULAR U.S. MAIL**

Honorable Richard M. Berman  
 United States District Court  
 Southern District of New York  
 500 Pearl Street  
 New York, NY 10007

Re: *Arcon Solutions, LLC v. East 29<sup>th</sup> Street, LLC, et al.*  
 Case No. 08-CV 2050 (RMB)

Dear Judge Berman:

Conference on 4/21/08 @ 9:15.

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**SO ORDERED:**  
**Date: 4/11/08** *Richard M. Berman*  
**Richard M. Berman, U.S.D.J.**

This office is counsel to Plaintiff Arcon Solutions, LLC. My *pro hac vice* application is currently pending with the Court, as are the applications of my partner Robert Zarco, and associate Mikhael Buchanan. Steven A. Rosen, Esq. is serving as Plaintiff's local counsel in this matter.

On April 4, 2008, Your Honor entered an Order of Discontinuance, and gave Plaintiff seven days from that date to apply to this Court for a further Order reinstating the action. This is the purpose of this letter.

As a result of a clerical mistake and inadvertent staff error, the attorneys in this office were unaware that on March 6, 2008, Joshua Rosenthal of Your Honor's chambers faxed over a notice scheduling a pre-trial conference for April 4, 2008 at 9:00 a.m. When Your Honor's fax came in on March 6, 2008, the firm's file clerk mistakenly assigned an incorrect "matter number" to the document.

Our office operates on a system wherein every matter is assigned a matter number. When documents pertaining to a particular matter arrive in the office, they are identified with the appropriate matter number and subsequently distributed to all attorneys assigned to the case. Although extremely rare, mistakes have happened as a result of human error.

USDC STAFF

DOCUMENT

ELECTRONICALLY FILED

EFC:LSA

DATE FILED: 4/10/08

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In this case, Michael Falke and Mark Gemignani are the principals of Plaintiff Arcon Solutions. In addition, Mr. Falke and Mr. Gemignani are themselves parties in the related Florida state court case of *Wachovia Bank, N.A. v. Gemignani*, Case No. 08-10056 CA 20. The Florida case is an interpleader action wherein Wachovia Bank seeks declaratory relief regarding a sum of money to which both Plaintiff Arcon LLC and Defendants East 29<sup>th</sup> Street, *et al.* assert an interest. Because the Florida state action and the New York federal action involve essentially identical clients and attorneys, all documents for both cases are identified under one matter number in the office system, namely matter no. 1605. Unfortunately, when Your Honor's fax arrived, our file clerk did not recognize that the case as captioned had been assigned to matter no. 1605. As a result, the clerk inadvertently mislabeled Your Honor's fax with the matter number assigned to "general" documents that are not associated with a particular case.

Because of this, Your Honor's fax regarding the pre-trial conference was never distributed to the appropriate attorneys on the case and the date was never calendared. In fact, the first time any attorney in the office became aware of the pre-trial conference was when I received a telephone call from Your Honor's chambers on April 4, 2008, the morning the conference was scheduled to take place. Furthermore, Steven Rosen, Esq., who is the attorney who signed the initial pleading, did not receive the March 6, 2008, notice, and was himself unaware of the April 4, 2008, hearing.

This office sincerely regrets the mistake that resulted in the attorneys' absence at the Court's properly scheduled pre-trial conference. Clearly, it was not our intent to disregard any order of this Court, and our office clerk has since been properly advised as to the correct manner in which papers related to this case need to be coded and distributed. The undersigned represents and certifies to the Court that this clerical error was the result of mistake and inadvertence. Because of this genuine and excusable mistake, and because it will not prejudice the opposing parties, the undersigned respectfully requests that the Court (i) vacate its Order of April 4, 2008 discontinuing Plaintiff's action, (ii) restore the Plaintiff's case to the active calendar, and (iii) reschedule the pre-trial conference in this matter for a later date.

Should you have any questions regarding the above, please do not hesitate to contact me.

Respectfully submitted,



ROBERT F. SALKOWSKI  
Florida Bar No. 903124  
(*Pro Hac Vice* Motion Pending)

cc: R. Zarco, Esq.  
M. Buchanan, Esq.  
S. Rosen, Esq.